

Testimony of Margaret Fung,  
Asian American Legal Defense and Education Fund  
Before the U.S. House of Representatives  
Committee on the Judiciary  
Subcommittee on the Constitution

Oversight Hearing on the Voting Rights Act:  
Section 203-Bilingual Election Requirements, Part I  
November 8, 2005

Good afternoon, Mr. Chairman and Members of the Subcommittee. My name is Margaret Fung, and I am the executive director of the Asian American Legal Defense and Education Fund (AALDEF). Thank you for the invitation to testify today on the topic of minority language assistance under section 203 of the Voting Rights Act. AALDEF is a 31-year old New York-based national organization that promotes and protects the civil rights of Asian Americans through litigation, legal advocacy and community education. Our programs focus primarily in the areas of immigrant rights, economic justice for workers, hate violence and police misconduct, language access to services, youth rights and educational equity, and voting rights and civic participation.

For over a decade, AALDEF has monitored elections on a regular basis for compliance with section 203 of the federal Voting Rights Act. Our most recent election monitoring efforts in 2004 were conducted in eight states: New York, New Jersey, Massachusetts, Pennsylvania, Virginia, Rhode Island, Michigan and Illinois. AALDEF led the campaign to secure the first fully-translated Chinese-language ballots in New York City in 1994, and we have filed section 5 comments in the Justice Department, objecting to redistricting plans that diluted minority voting strength and a limited voting scheme that discriminated against Asian Americans in the New York City school board. AALDEF represented Asian American voters who intervened in Diaz v. Silver, 978 F. Supp. 96 (E.D.N.Y. 1997)(per curiam), aff'd, 522 U.S. 801 (1997), a constitutional challenge to New York's 12<sup>th</sup> Congressional District, and established that Asian Americans in Manhattan and Brooklyn constitute a "community of interest" that should be kept together within a single legislative district. We also represented Asian American voters who sought to intervene in U.S. v. City of Boston, Civ. Action No. 05-11598 (D. Mass. 2005) on behalf of Chinese and Latino voters in Boston who were denied equal access to the electoral process. AALDEF has conducted the largest multilingual exit polls of Asian Americans voters in the nation, polling 11,000 Asian American voters in 8 states in 2004, and over 5,000 Asian New Yorkers in the 2000 elections.

I am speaking today about the significance of section 203 of the Voting Rights Act in promoting Asian American civic participation and in particular, the special importance of section 5 of the Voting Rights Act to secure effective implementation of Asian language assistance under section 203 in three counties in New York City.

Under Section 203, a jurisdiction must provide minority language assistance if the Census Director certifies that:

1. More than 5% of citizens of voting age in the jurisdiction are members of a single language minority and are limited English proficient; or
2. More than 10,000 citizens of voting age in the jurisdiction are members of a single language minority and are limited English proficient; or
3. More than 5% of American Indian or Alaskan Native citizens of voting age within an Indian reservation are members of a single language minority and are limited English proficient; and
4. The illiteracy rate of the group is higher than the national illiteracy rate, as defined by educational attainment.

Language assistance includes the translation of written voting materials at all stages of the electoral process, including voter registration forms, ballots, notices and instructions, as well as oral language assistance, such as interpreters and bilingual poll workers. Section 203 applies to Alaskan Natives, American Indians, Asian Americans, and persons of Spanish heritage.

Thirteen years ago, I testified before the House Judiciary Subcommittee on Civil and Constitutional Rights, in support of the Voting Rights Act Language Assistance Act of 1992. AALDEF supported the creation of the new, alternate numerical benchmark of 10,000 language minority citizens to trigger section 203 coverage, because large concentrations of Asian Americans in urban areas, such as New York City and Los Angeles, would not have been covered under the existing 5% threshold.\* At that time, no Asian American in New York had ever been elected to Congress, the New York State Legislature or the New York City Council. We found in our multilingual exit polls of Asian American voters in New York that 4 out of 5 voters in Manhattan's Chinatown and Flushing, Queens did not speak or read much English, and that they would vote more often if bilingual assistance were provided.

There was widespread bipartisan support in Congress in 1992 to expand coverage through an alternative numerical benchmark of 10,000 voting age citizens of a single language minority. As a result, over 200,000 Asian Americans nationwide, in 10 counties in California, Hawaii and New York, became eligible to receive minority

---

\*Number of Limited English Proficient Voting Age Citizens from a Single Language Minority Community Needed To Meet The 5% Threshold in 1990. Data provided by APALC.

<u>Urban</u>		<u>Non-Urban</u>	
Los Angeles County, CA	443,158	Napa County, CA	5,538
San Francisco County, CA	36,198		
Cook County, IL	255,253	Peoria County, IL	9,141
Kings County, NY	115,033	Orange County, NY	15,382
New York County, NY	74,377	Albany County, NY	14,629
Queens County, NY	97,579		
Honolulu County, HI	41,812	Kauai County, HI	2,559

language assistance under section 203. The number of covered jurisdictions increased again after Census 2000, expanding language assistance to over 672,000 Asian Americans residing in 16 counties in 7 states, with some jurisdictions providing assistance in one or more Asian languages.\*

The Asian American population remains one of the fastest growing communities of color in the United States. According to Census 2000, Asian citizens of voting age numbered 3.9 million in 1996, and rose from 4.7 million in 2000 to 6.7 million in 2004. Asian American voter turnout is also steadily increasing, from 1.7 million in 1996, to nearly 3 million in 2004. (U.S. Census Bureau, Current Population Survey).

#### Section 203 of the Voting Rights Act: A Success Story

Section 203 has removed barriers to voting and opened up the political process to thousands of Asian Americans, many of them first-time voters and new citizens. According to AALDEF's 2004 exit poll of 11,000 Asian American voters, almost one-third of all respondents needed some form of language assistance in order to vote, and the greatest beneficiaries of language assistance (46%) were first-time voters. Of those polled, over 51% of Asian American voters got their news about politics and community issues from the Asian-language media.\*\*

At the most fundamental level, translated ballots in voting machines have enabled Asian American voters to exercise their right to vote independently and privately inside the voting booth. The availability of interpreters in polling places provides additional oral language assistance for Asian American voters who are not fully proficient in English.

Since the 1992 amendments to section 203, there have been important gains in Asian American electoral representation. In New York City, the municipality with the nation's largest Asian American population, the first Asian American, John Liu, was elected to the New York City Council in 2001. Jimmy Meng was elected the first Asian American member of the NY State Assembly in 2004. Both Liu and Meng were elected in Queens County, one of three counties in New York City covered by section 203. In California, the state with the largest Asian American population, there were no Asian Americans serving on the state legislature in 1990, and now, there are nine. In Houston, Texas, the first Vietnamese American, Hubert Vo, was elected to the state legislature in 2004, within years after Vietnamese language assistance was required in Harris County under section 203.

---

\*Alaska: Kodiak Island Borough-Filipino. California: Alameda County-Chinese; Los Angeles County-Chinese, Japanese, Korean Filipino, Vietnamese; Orange County-Chinese, Korean, Vietnamese; San Diego County-Filipino; San Francisco County-Chinese; San Mateo County-Chinese; Santa Clara County-Chinese, Filipino, Vietnamese. Hawaii: Honolulu County-Chinese, Filipino, Japanese; Maui-Filipino. Illinois: Cook County-Chinese. New York: Kings County (Brooklyn)-Chinese; New York County (Manhattan)-Chinese; Queens County-Chinese, Korean. Texas: Harris County-Vietnamese. Washington: King County-Chinese.

\*\*Asian American Legal Defense and Education Fund, The Asian American Vote 2004: A Report on the Multilingual Exit Poll in the 2004 Presidential Election (2005) ([http://www.aaldef.org/images/04-20-05\\_exit\\_poll\\_report.pdf](http://www.aaldef.org/images/04-20-05_exit_poll_report.pdf)).

Section 203 has also aided grass-roots efforts to increase voter registration among eligible Asian Americans. As compared to a decade ago, when only a small number of nonpartisan groups did voter registration, there are now scores of new Asian American groups and coalitions throughout the country doing voter education and registration in the Korean, Filipino, Asian Indian, Pakistani, Bangladeshi, Cambodian, Laotian, and Vietnamese communities.

#### Voter Discrimination Against Asian Americans Still Exists

Despite the growing political participation of Asian Americans, racism against Asian Americans, both overt and subtle, is alive and well at the polling place. These are just a few examples from the 2004 and 2005 elections:

-In the Queens neighborhood of Jackson Heights, NY, at P.S. 69, one poll inspector said, "You Oriental guys are taking too long to vote," and told an AALDEF monitor to tell "his people"-implying "Asian Americans"-to vote faster, because others were waiting on line. Other poll workers commented that there were too many bilingual materials on the tables: "If they [Asian American voters] need it, they can ask for it." At that poll site, a Chinese American voter who asked for language assistance was directed to a Korean interpreter, who could not help. And several hostile white voters at this poll site made remarks such as, "You all are turning this country into a third-world waste dump," "You can't have anyone go inside the booth with you," and "You should prepare and learn English at home before you come out to vote." At another site in Queens, PS 184, a poll inspector, when asked about the availability of translated materials, sarcastically replied: "What, are we in China? It's ridiculous."

-In Falls Church, VA at Baileys Elementary School, a Pakistani American voter politely refused an offer of candy from a poll worker, noting that she was fasting in observance of Ramadan. Another poll worker commented: "If you think certain cultures are weird, you should read about *them*. They're really weird."

-At the Poe Middle School in Annandale, VA, a poll worker told a Laotian American voter: "Your name is the longest I've ever seen." Although this seems like an innocuous comment, it had the effect of making the voter feel uncomfortable enough to report it to our election monitors.

-In Edison, New Jersey, the Justice Department dispatched federal observers to monitor the 2005 primary elections, following complaints by AALDEF and other community groups about anti-Asian remarks made by talkradio hosts on NJ 101.5 FM about a Korean American candidate for Mayor. Federal observers found that poll workers told voters they should learn English in order to vote, and one poll worker said that when a Gujarati or Hindi-speaking voter appeared, she would "send them to the nearest gas station." As a result of many such incidents, the Justice Department has sent attorneys and observers to Edison to monitor the New Jersey elections on Nov. 8, 2005. See Jerry Barca, "Feds to Watch Edison Vote," New Brunswick Home News Tribune, Nov. 2, 2005, <http://www.thnt.com/apps/pbcs.dll/article?AID=/20051102/NEWS/511020421/1001>.

### The Critical Role of Section 5 In Securing Effective Minority Language Assistance

In jurisdictions covered under both sections 5 and 203 of the Voting Rights Act, minority language assistance programs established or changed under section 203 must be submitted to the Justice Department for preclearance before they can take effect. Section 5 played a pivotal role in shaping New York City's Chinese Language Assistance Program, which was first adopted after the 1992 language assistance amendments to section 203.

Although the Board of Elections had agreed to provide sample ballots and voting instructions in Chinese in the 1994 primary elections, it claimed that New York's mechanical-lever voting machines did not have space for the candidates' names in Chinese. AALDEF met on numerous occasions with local election officials to convince them that candidates' names must be transliterated into Chinese, because this was the single most important piece of information to the voter. During one lively meeting of the election commissioners, over a hundred Asian Americans packed the hearing room, carrying banners and Chinese-language signs demanding their right to fully-translated bilingual ballots. An August 19, 1994 *New York Times* editorial delivered a scathing rebuke to the Board of Elections's inaction under the Voting Rights Act: "That sounds like the foot-dragging bureaucratic arguments that have been raised all over America at one time or another against giving minorities their rights. It is no excuse for not obeying the law."

Ultimately, it was the Justice Department's oversight under section 5 that forced the recalcitrant Board of Elections to provide fully-translated machine ballots with candidates' names in Chinese, bringing New York City into compliance with section 203. Section 5 gave community groups and individuals an opportunity to shape the local language assistance program and provide their comments to the Justice Department. Over the past decade, federal observers have been sent by the Justice Department to monitor local elections in New York City and other cities, and they have helped to improve compliance with section 203.

### Lowering the Numerical Trigger to Improve the Effectiveness of Section 203

Although the language assistance provisions were enacted in 1975, section 203 has had its most significant impacts on Asian American political participation only after the 1992 amendments, when Congress created the alternative numerical trigger of 10,000 voting age citizens of a single language minority.

The current formula of section 203 still excludes a large sector of the Southeast Asian community, which includes Americans from Vietnam, Cambodia and Laos. Many came to the United States as refugees after the Vietnam War or are the children of refugees. They number over 1.8 million and have become U.S. citizens at rates higher than the national average. Southeast Asian American communities have high levels of limited English proficiency and low levels of educational attainment, which are the very characteristics of the citizens that Congress intended to protect under section 203.

Congress recognized in 1992 that educational disparities significantly affect the ability of language minorities to participate in the electoral process. According to Census 2000, 79% of Asian American children aged 5 and over spoke a language other than English at home. These numbers are even higher for newer immigrant groups, with over 90% of

Cambodians, Hmong, Laotian, Pakistanis and Vietnamese speaking a language other than English at home. \* Educational attainment remains low for Southeast Asian American communities: 26% of Cambodians, 45% of Hmong and 23% of Laotians have had no formal schooling, compared to 1.4% of the overall population. Similarly, Census data show that only 9% of Cambodians, 7% of Hmong and 8% of Laotians obtain a bachelor's degree or higher, compared to 24% of the overall U.S. population. In five cities with large Southeast Asian American populations, there are high numbers of elementary and secondary school students who are defined as English Language Learners (ELL's)--persons who are in the process of acquiring English and have a first language other than English. In St. Paul, Minnesota, 54.4% of Hmong students are ELL's; 44.9% of Vietnamese students in Westminster, CA; 44.3% of Lao students in Sacramento, CA; 39.6% of Cambodians in Long Beach, CA, and 30% of Cambodian students in Lowell, MA are ELL's.

In AALDEF's 2004 multilingual exit poll of 654 Southeast Asian Americans, we found that 47% of Southeast Asian Americans said they were limited English proficient, and over one-third of all respondents needed some form of language assistance in order to vote.

The effect of lowering the numerical trigger to 7,500 would be to remove language barriers for at least 77,955 limited English proficient Asian American citizens eligible to vote.\*\* This increase of 9 jurisdictions would affect counties in California, Illinois, New York, and Washington, in which all but one county are already mandated to provide voting assistance in one or more Asian languages.\*\*\*

AALDEF is preparing a more detailed report on the impacts of expanding section 203 coverage to Asian American communities and the effect of using American Community Survey data to establish future section 203 determinations. We will submit this report and other recommendations to the Committee at a later date.

---

\*T. Reeves and C. Bennett, The Asian American and Pacific Islander Population in the United States: March 2002, Current Population Reports (Census Bureau 2003), 20-540.

\*\*California: Alameda County-Filipino; Los Angeles County-Cambodian; Sacramento County-Chinese; San Diego County-Vietnamese; San Francisco County-Filipino; San Mateo County-Filipino. Illinois: Cook County-Korean. New York: Queens County-Asian Indian. Washington: King County-Vietnamese.

Lowering the numerical trigger to 7,500 would also require Spanish language assistance in 6 new jurisdictions in NJ, WI, TX, VA, OH, and IL, totaling 49,845 limited English proficient Latino citizens.

\*\*\*For the Asian American community, it would actually be more meaningful to lower the section 203 numerical trigger to 5,000 citizens of voting age with limited English proficiency. An additional 79,170 limited English proficient Asian American citizens would receive language assistance if the numerical trigger were 5,000. Two new East Coast jurisdictions (Vietnamese and Korean in Fairfax County, VA and Chinese in Montgomery, MD) would be covered, in addition to the following counties: California: Alameda County-Vietnamese; Contra Costa County-Chinese; Los Angeles County-Asian Indian and Thai; Sacramento County-Vietnamese; San Diego County-Chinese. Hawaii: Honolulu County-Korean. Illinois: Cook County-Asian Indian, Filipino. Texas: Harris County-Chinese.

### Conclusion

The Voting Rights Act of 1965 has been called one of the most effective pieces of civil rights legislation in American history. Section 203 is the provision of the Voting Rights Act that most directly removes barriers to voting for Asian Americans, Latinos, and Native Americans, who are limited English proficient and in need of language assistance in order to participate effectively in the electoral process. At a time when the Voting Rights Act is beginning to have real significance for the growing population of Asian Americans, it is essential that section 203 be extended for 25 years and also expanded, so that Asian Americans can overcome a legacy of institutional racism and participate fully in the democratic process.